



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 162 OF 2018

IN THE MATTER OF: SUPREME COURT PETITION NO. 15 OF 2015

FRANCIS KARIOKO MURUATETU & ANOTHER VS. REPUBLIC

AND

IN THE MATTER: OF: COURT OF APPEAL NO. 65 OF 2002 MOMBASA

AND

IN THE MATTER OF: HIGH COURT APPEAL NO. 178 OF 2001 AT MOMBASA

AND

IN THE MATTER OF: CRIMINAL CASE NO. 213 OF 1999 MALINDI

BETWEEN

JOHN KAMANDE MWANGI.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT

1. The Petitioner was charged and convicted of offence of robbery with violence in Criminal Case No. 213 of 1999 (Malindi). His appeal was dismissed. The current petition is brought for resentencing pursuant to the Supreme Court decision in **Francis Karioko Muruatetu and Another vs. Republic [2017] eKLR**.
2. The Petitioner was sentenced to death and has now served 20 years in jail. The Petitioner is a sick man. According to the Medical Report and Progress Report from the prison, the Petitioner suffers from throat cancer. He can hardly talk, and is evidently in pain.
3. The Petitioner is 53 years. The Social Inquiry Report filed herein is favourable for his early release. Mr. Fedha for the Director of Public Prosecutions had earlier submitted that the Petitioner be jailed for 35 years. However, upon seeing and considering the medical report and the physical condition of the Petitioner the Director of Public Prosecutions submitted that the Petitioner is a sick man and not a risk to society and that he should be released.
4. I have considered all the circumstances of this case. The Petitioner has served 20 years. He is a sick man who needs to be cared for by his family. The Social Inquiry Report filed herein on 20th June, 2019 is favourable that the Petitioner has a family who can care for him, as he attends chemotherapy at Kenyatta Hospital in Nairobi.
5. The Petitioner has been disciplined while in prison. He says that he has already reformed.

6. In my view, it is unfortunate that the Petitioner is a sick man. He has suffered enough for the crime he committed. I will limit his punishment to the 20 years he has already served.

7. In conclusion the Petitioner is jailed to term equivalent to that already served with the result that the Petitioner is herewith forthwith released and set free unless lawfully held.

That is the Judgment of the Court.

Dated, Signed and Delivered in Mombasa this 24th day of July, 2019.

E. K. OGOLA

JUDGE

In the presence of:

Mr. Fedha for DPP

Petitioner in person

Mr. Kaunda Court Assistant